

ORIGINAL

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re)
)
Satellite Delivery of Network) CS Docket No. 98-201
Signals to Unserved Households for) RM-9335
Purposes of the Satellite Home) RM-9345
Viewer Act)
)
(Part 73 Definition and Measurement)
of Signals of Grade B Intensity))

TO: The Commission

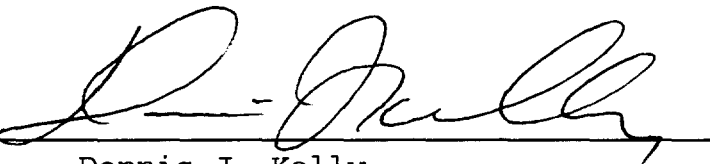
COMMENTS OF HOLSTON VALLEY BROADCASTING CORPORATION

Holston Valley Broadcasting Corporation (HVBC),
licensee of UHF Television Broadcast Station WKPT-TV,
Kingsport, Tennessee, by its attorney, hereby respectfully
submits its Comments in the above-referenced proceeding.
Those comments are stated in the attached statement,
executed by George E. DeVault, Jr., President of HVBC.

Respectfully submitted,

HOLSTON VALLEY BROADCASTING CORPORATION

By



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COMMENTS OF HOLSTON VALLEY BROADCASTING CORPORATION

Background

Holston Valley Broadcasting Corporation (Holston), licensee of ABC Television affiliate WKPT-TV, channel 19, Kingsport, Tennessee, hereby files its Comments on the Commission's Notice of Proposed Rulemaking, which proposes a change in the geographic area of non-duplication protection provided to network television affiliates under the provisions of the Satellite Home Viewer Act (the "Act").

WKPT-TV has been an ABC affiliate since its inception in 1969, and has from its inception provided local news and public affairs programming and public service programming and announcements to the citizens of the very mountainous Tri-City (Kingsport-Johnson City-Bristol), Tennessee/Virginia, television market (Nielsen DMA #92). As a UHF station in a market dominated by two older VHF stations, WKPT-TV experienced financial difficulties in its early years. For reasons set forth herein its recent years have not been especially profitable either.

Currently WKPT-TV maintains a news staff which includes 16 persons (full-time/part-time combined) and produces two half hour local newscasts plus two five minute newscasts and numerous news briefs daily. (Holston also originates a 10 PM nightly newscast on co-owned LPTV station, WAPK-LP, the local UPN Network affiliate, which is relayed by three other co-owned LPTV stations located throughout the market.) With the exception of one director the personnel total shown above does not include audio and video operators, camera persons, or any of the other production personnel involved in getting local news on the air.

Throughout its almost thirty year history WKPT-TV has had its share of problems reaching all homes in the market. The station has given away thousands of indoor UHF antennas and has sold at or below cost many thousands of outdoor UHF antenna kits. It has erected and maintains both UHF and VHF translators in communities within the market, which are shielded by rugged terrain from quality direct reception of its signal, and has granted permission to other translator stations not owned by Holston to rebroadcast WKPT-TV's signal.

Grade A & B Contours Do Not Always Depict Coverage

Holston readily admits that Grade A and B contours as defined by the FCC are poor predictors of coverage, especially in mountainous areas. It is conceivable that homes located well within the City Grade coverage of a television station may not receive a quality signal while some folks located at the edge of the Grade B contour or even beyond might receive a signal of better than City Grade strength and quality. Some folks like to live on top of mountains or on the side of the mountain facing the local stations' transmitters. Others choose to be nestled in deep hollows completely surrounded by mountains. The only way to properly determine whether a home equipped for DBS reception can receive an adequate signal from a given local network affiliate or one of its translators is to measure and evaluate the signal received at that home using the proper receiving equipment.

If the area within which a station's copyright to its network programming is protected is arbitrarily shrunk by a certain percentage based upon general criteria, the local affiliate will likely lose almost every DBS-equipped viewer outside that area, who for convenience has chosen not to utilize the appropriate antenna and receiver for reception of the local broadcast station. At the same time the local affiliate may also lose other homes well-within whatever whittled-down artificial so-called exclusive area remains, because as noted above some homes located even close to a station's transmitter have legitimate reception problems, which leave them with marginal reception, even when they use proper receiving equipment.

Such an arbitrary change will thus allow some viewers who do not deserve to receive a distant network affiliate to do so, thus violating both the intent and the letter of the Act while depriving the local network affiliate of deserved viewership. Depending upon the detail in the provisions of the change, a viewer within the contrived protected area could automatically be deprived of the distant network signal even if that viewer truly deserves a waiver. An arbitrary change of the type proposed, however, will certainly deprive the local affiliate of many viewers who truly do not deserve a waiver.

The net effect of all of this of course is to erode the affected local station's audience and eventually its ability to afford to provide the local news, weather, sports, and public service programming it provides to its market.

Holston's Experience

Through the years when the larger C-Band satellite dishes proliferated, Holston granted waivers to hundreds of viewers who legitimately could not receive WKPT-TV's signal. In some cases measurements were necessary. In others it was possible to

determine by location that a waiver request was legitimate. The recent push by DBS purveyors to distribute their product and the cutting off of distant DBS-delivered network affiliates to DBS subscribers ---- most of whom were sold the service illegally in the first place ---- has led to a spate of new requests for such waivers.

This has led Holston to question more thoroughly which DBS subscribers can legally be allowed to receive distant network affiliates via satellite and which cannot. Questioning various requestors has revealed some very interesting facts.

We have learned that many DBS subscribers have never tried an outside rooftop antenna. Many have tried to receive our UHF station or one of the UHF translators using a VHF antenna. Many have split the signal numerous ways or have run it through a hundred feet or more of transmission line with no amplification. Indeed many have not tried a pre-amplifier of any type or have tried a VHF-only pre-amplifier when they are trying to pick up a UHF signal. Most have not attempted to receive one of the many translators which relay WKPT-TV's signal. Some have their antenna hooked to the VHF terminals on their set rather than to the UHF terminals. Some have nothing attached to the UHF terminals. Some are trying to pick up a VHF translator with a UHF antenna. Some are located very close to ---- even in sight of ---- the station's main transmitting antenna or one of the translators, which relay its signal, but still request waivers.

Many viewers are using old unshielded flat 300 ohm "twin lead" transmission line instead of modern shielded coaxial cable. Such unshielded lead-in can itself act as part of the antenna resulting in severe "ghosting" or multiple images.

An amazingly large number have their TV sets and/or VCR's either knowingly or unknowingly set to the "cable" position rather than to the "antenna" or "broadcast" position. This means they are tuning in frequencies which over the air are utilized for land-mobile stations rather than UHF broadcast TV channels. This problem has multiplied since on-screen menus in chip-based receivers have replaced simple two position switches. In most cases if there is a momentary A.C. power interruption the various on-screen menu-driven choices return to their "default" settings. Since more people use cable than antennas these days, most newer sets default to the "cable" mode rather than the "antenna" mode. What a sad surprise it is to have someone call weeks or months after a brief power outage in their neighborhood to ask if your station is ever going to return to the air!

Then there are those for which VCR's were made, but who refuse to use one ---- like the viewer who said he liked to watch his prime time TV late at night and wanted permission to receive a West Coast ABC affiliate, on which network prime time programming

appears three hours later than it does in the Eastern Time zone, where WKPT-TV is located. The same viewer readily admitted he could receive WKPT-TV!

While in our mountainous area there are certainly some homes, which could not receive WKPT-TV's local signal under any circumstances, a very great many of the DBS subscribers requesting waivers are not among them. Those who fall into that category have been illegally sold a service and are simply disappointed ---- even irate ---- because what they have been receiving illegally has been taken away!

Reduction of Network Exclusivity Will Mean an End to Localism in Television

Further loss of network non-duplication protection in this area will siphon local viewers away to distant stations ---- particularly in relatively small markets like Tri-Cities, Tennessee/Virginia ---- ultimately leading to the demise of some or all local television stations and the local news, weather, public affairs, and sports programming they provide, not to mention the opportunities they provide advertisers to reach their customers and local, county, state, and locally-elected or appointed federal government officials to reach their constituents.

Small dish DBS (as opposed to the larger C-Band dish system) began around 1995. When true DBS arrived this audience erosion began. The following figures are from the Nielsen Station Index's February cumulative viewing reports for the years's shown:

<u>Year</u>	<u>WKPT-TV's Cume %</u>	<u>DBS-delivered ABC Affiliates Cume %</u>
1994	66.4	0.0
1995	64.9	1.5
1996	59.7	1.8
1997	54.4	6.0
1998	51.1	3.9

These are not figures for individual programs network or local, but reflect cumulative viewing Sunday through Saturday from 7 AM to 1 AM the next morning. WKPT-TV did not change its power or coverage during these years. The homes WKPT-TV lost did not suddenly lose their ability to receive WKPT-TV. It is no doubt true that some are viewing for the first time so-called "basic cable" networks received via DBS. In large part, however, they have simply chosen to receive their traditional broadcast network programming illegally via satellite instead of from our local station, and the purveyors of DBS service willingly sold the service to them illegally.

The Commission Does Not Have the Authority to Change the Standard

The Satellite Home Viewer Act states and two federal courts have confirmed that the legal standard is not whether a home is "predicted" to receive a certain grade of service from the local network affiliate. It is instead whether the signal can actually be received.

The Act is a copyright statute. Congress authorized the Federal Courts to enforce it --- not the Commission.

DBS Subscribers Do Not Have to Lose Their Network Signals

DBS subscribers who are now receiving their network signals illegally via distant affiliates do not have to lose network programming. In most instances should they desire to continue to receive network service they simply must make the one time modest investment in the proper receiving equipment (antenna, mast, pre-amp, lead-in, etc.) rather than paying by the month for the illegal delivery of distant network affiliates via satellite. A reliable antenna in this market can be purchased for \$40 to \$130 (depending upon the distance from the transmitting site).

The Ultimate Solution Is "Local-Into-Local"

The technology exists today through a combination of spectrum-conserving compression and digitization of signals and satellite spot beam delivery to allow any household in the country (which chooses not to install the conventional equipment to enable reception of the local network affiliates or which truly can't receive the local signals even with the proper equipment) to receive their local stations. At least one entrepreneur, Capitol Broadcasting in Raleigh, North Carolina, is ready to proceed with a plan to carry every full-service TV station in the nation into its own local market via DBS, and the existing giants of the DBS world could certainly amass the investment to make it happen.

What is needed is the appropriate changes in Copyright law to allow any local signal to be delivered within its own market via DBS satellite. While the Commission can't change copyright law, it can certainly urge Congress to do so. Most broadcasters would be willing to grant "temporary" waivers to DBS subscribers whose reception is marginal or borderline, if the DBS industry were moving quickly to total local-into-local delivery.

Conclusion


The DBS industry, which has violated federal law by illegally selling distant network signals, must not be rewarded for its illegal acts by a precipitous and artificial change in the definition of acceptable reception of local stations. A belated understanding of the law by and a suitable education

process for the nation's viewers coupled with wholehearted support for a change in copyright law in order to allow "local-into-local" DBS delivery are the actions the Commission needs to take in order to preserve the system of local community service on which the American Broadcast industry was founded and which is mandated by the federal Communications Act.

As a service to those DBS subscribers who were innocently led by the purveyors of DBS service into the illegal act of subscribing to distant signals when a local signal could provide the same desired network programming, the Commission should support the broadcast television industry's willingness to postpone temporarily the date when illegally connected viewers will lose network service from distant affiliates and use its influence to urge the courts to effect that temporary postponement.

Respectfully submitted,

HOLSTON VALLEY BROADCASTING CORPORATION


George E. DeVault, Jr.
President

December 10, 1998